From: Braz Brandt
To: Microsoft ATR
Date: 1/23/02 1:03pm
Subject: Microsoft Settlement

To Whom It May Concern:

Looking at my calendar, I took notice of today's date and the rapidly approaching end to the period alloted for public comments regarding the Proposed Final Judgement against Microsoft as negotiated by Microsoft and the Department of Justice. Realizing that I have not yet taken the time to respond to the Proposed Settlement, I feel compelled to do so now, before the period alloted expires.

I want to express my extreme displeasure with the Proposed Final Judgement, and stress to all parties involved with the review of the Proposed Final Judgement that this settlement, as currently written, does little to address the issues raised by Judge Jackson and further upheld during appeal. Indeed, the settlement can be seen as ineffectual, given the tendencies of Microsoft to frequently redefine and at times even ignore the directives of the Department of Justice and established US Laws.

Unlike many people in my line of work, I will not take the time to raise the issues that fall outside the scope of both the Department of Justice's case against Microsoft. Instead, I would like to focus on what I feel is the primary problem with the settlement, and highlight this problem as just one of several.

The Court of Appeals upheld Judge Jackson's Findings of Fact, which stated that Microsoft holds a monopoly in operating system software, and additionally, that Microsoft has used that monopoly power to stifle competition and even destroy competitors. Further, Microsoft was found to have used its tight control over the operating systems "APIs" to prevent competition with its own products, by creating an artifically high barrier for would-be competitors to overcome.

To that end, the Proposed Final Judgement should remedy this situation. Specifically, my concerns are regarding the imposed publication of Microsoft APIs. If defined and implemented properly, this action would have a significant effect not only on middleware vendors, but also on operating system developers; said developers could use those APIs to provide the underlying functionality of Windows without the currently-necessary reverse-engineering required to extract and implement these standards.

As it currently stands, an operating systems developer must spend quite a large amount of time examining, studying and interpreting the API calls any application makes to the Windows family of operating systems. Once this is done, the developer can then implement and design replacement operating system services, so that these applications can run as seamlessly as

possible on new, "Windows-compatible" operating systems.

Obviously, the development of Windows-compatible operating systems would be detrimental to Microsoft's sales and market-share. To prevent the growth of such alternatives to Windows, Microsoft has refused to publish their Windows APIs to the public, and has taken great pains to make the reverse-engineering of those APIs a difficult task. Microsoft routinely and with great care makes changes to the Windows APIs, and then releases products that take advantage of these new, unpublished APIs. Therefore, any development efforts invested in deciphering Windows API calls are rendered useless with each new version of Windows.

To remedy this situation, the Department of Justice has attempted to force Microsoft to open their APIs to developers. However, while the gesture is one that is welcome, its implementation leaves much to be desired.

First, the proposed settlement narrowly defines APIs as the interfaces between Microsoft Middleware Products and Microsoft Windows Operating System Products. Furthermore, the settlement then further narrows the scope of "Middleware Products" to be a subset of existing Microsoft technologies - Internet Explorer, Outlook Express and Windows Media Player, for example - and "Windows Operating System" as Windows 2000, Windows XP and their successors.

If Microsoft didn't have a history of both creating/purchasing new operating systems technologies and also shifting focus away from current operating systems in favor of other technologies, these definitions might only be considered questionably narrow in scope. However, as Microsoft has shown in the past, it is more than willing to shift, redefine and create and/or purchase new technologies in order to reinforce its monopoly powers.

The Department of Justice has ignored Microsoft's growning incroachment into the handheld and newly-emerging tablet PC markets, where Microsoft promotes and develops Windows CE and Windows XP for Tablet-PCs, respectively. The Proposed Final Judgement, with its narrow definition of "Windows Operating System", leaves Microsoft free to both continue its illegal and predatory business practices in the handheld computer market, but also to, at some future date, shift its operating system focus away from "Windows 2000, Windows XP Home, Windows XP Professional and their successors" to Windows CE, Windows XP Tablet-PC Edition or some third, as-of-yet undeveloped technology. Doing so would eliminate any legal requirements Microsoft would have to follow the terms of the proposed settlement.

Additionally, with its narrow definition of "Microsoft Middleware Products", Microsoft isn't prevented from adopting new, emergining technologies - as it did with Internet Explorer - and incorporating them into the "operating system" to avoid the Middleware label. Furthermore, Microsoft could simply redefine these portions of Microsoft Middleware as essential parts of the operating system, and thereby refuse to publish any future APIs.

While I'm confident that the Department of Justice is interested in enforcing the Sherman Act and the Findings of Fact of the US District and Appeals Courts, the Proposed Final Judgement as currently written accomplishes neither of those goals. I hope that my brief overview of just one of the many problems with the proposed settlement brings to light the issues involved in dealing with Microsoft, a company with a history of ignoring law and judicial decree where they prove inconvenient. I also hope that the tide of company-sponsored statements, both for and against the proposed settlement, do not drown out the concerns of consumers and computer professionals like myself.

I would like to thank you for taking the time to review my comments. I look forward to any opportunity to discuss my comments further, and welcome each and every opportunity to provide input into the fair and equitable settlement of the Department of Justice's case against Microsoft.

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